

1888-013
Lee Co.

Chancery Causes: Alexander M. Ely for & vs. James R. Ely &c

Goslyn, Wygal, Morgan

CA-Debt
T-Property

-Deed

To the Hon. H. S. K. Merison Judge of the
Circuit Court of Lee County Virginia:

Humbly complaining your Orator Alexander
M. Ely who sues for the benefit of Henry B. Joslyn
would respectfully represent, that heretofore he
bargained and sold, and by deed dated the
9th day of Feb. 1885 he conveyed to One James
R. Ely a certain tract or parcel of land supposed
to contain 60 acres lying and being in said County
of Lee in the neighborhood of Wesley Chapped about
four or five Miles South West of Janesville, and on
the north side of Powells river, and
deed is herewith filed as a part of this bill marked
(A B) and by reference thereto it will be seen, that
your Orator reserved to himself therein, the Vendor
lien for the unpaid purchase Money

Your Orator further states, that the said James
R. Ely on the 25th day of January 1884 executed
to him his two bonds under seal for the sum of
\$350.00 in the aggregate: One of which bonds is for \$200.00
and the other is for \$150.00 aggregating as aforesaid
and these bonds are herewith exhibited as a further
part of this bill, marked (A C) and A D,

By the first of said bonds, the said James R. Ely
on the 25th day of January 1884 bound himself his heirs
&c to pay to your Orator, on the 25th day of January 1886

the sum of \$200.00 with legal interest thereon from said 25th day of January 1884 till paid for value received in land, And by the second of said bonds, the said James R Ely bound himself heirs &c. to pay to your Orator on the 25th day of January 1887 the sum of One hundred and fifty dollars for value received of him in land with interest thereon from said 25th day of January 1884. till paid;

Your Orator states that each and every part of said two bonds is now due and owing to him no part thereof ever having been paid by the said James R Ely or any one else either to your Orator or the said Henry C. Joslyn to whom the same is now due and owing.

Your Orator further states that by deed dated May the 19th 1886. the said James R Ely, wife undertook to, and did convey unto Henry J. Morgan trustee the tract of land so conveyed by your Orator to said Jas. R. Ely, in order to secure to John B. Hygal the sum of \$600. for debts assumed by him for said Ely, and this original deed of trust is herewith filed as part hereof marked (A E)

Your Orator is advised that said \$350.00 with the interest which has accrued thereon, constitutes and is a paramount lien on said land, and

that the same must be first paid in full, before the said Wygal can get any thing, and that said Wygal can only get so much of the proceeds of the sale of said lands, as may remain after the payment of the purchase money due your orator for the use and benefit of said Joslyn.

Your Orator is further advised that under the facts of the case a court of Equity will decree the sale of said land and apply the proceeds of the sale thereof, first to the payment of the debt & interest due your Orator, and the residue, if any, to said Wygal, and to attain that end is the object of this bill.

The premises considered your Orator prays that said James R. Ely, John B. Wygal and Henry J. Morgan be made defendants to this bill and be required to answer the same fully in Oath, and upon a hearing of the cause a decree be rendered in favor of your Orator against said James R. Ely for said sum of \$350.00 with interest thereon from the 25th day of January 1884 till paid and the cost. And that said tract of land be decreed to be sold to pay the same. And if mistaken in this his special prayer then your Orator prays for all general relief, May the Commonwealth's writ of Habeas Corpus be directed &c.

H. J. Morgan for Peff

6.31. to Mr. 1888
S 1.50
A 15.00
Estimate 5.00
\$27.81

¹⁸⁸⁸
Alexander M Ely for

as } Orig-Bill

James R Ely & Co

1888. Febry Bill Filed Spd

Executed and Directed

" Mr. D. N. Condit & Cause
set for hearing.

" Apr. Decree Contd

Augt. Decree Confirming and effect
of sale & ordering clud.

" Decree final & Disch. confd.

200.

On the 25 day of January 1886. I bind myself my
heirs &c to pay Alex McEly Two hundred dollars
with interest from date, For value received in
land which said Alex McEly secures to me by
title bond of date Jan'y 25th 1884, and said land
stands bound for the purchase money. Witness
my hand and seal This 25 day of Jan'y, 1884.
James R Ely Seal

175.

On the 25 day of January 1887 I bind myself
my heirs &c, to pay Alex. McEly One hundred &
fifty dollars with interest from date for value
received in land which said Alex. McEly secures
to me by title bond of date 25 Jan'y, 1884, and
said land stands bound for the purchase money
Witness my hand and seal This 25 day of Jan'y, 1884
James R Ely Seal

I hereby sign over the
within note for value
received of H. C. Gaskin
Feb the 9th 1885.

Alex M. Ely.

Jas R. Ely
To note \$ 200⁰⁰
Given Jan'y. 25th 1886.

Al

Jas R. Ely
To note \$ 150⁰⁰
Given Jan'y 25. 1887.

Ad.

Alex M. Ely.

I hereby sign over the
within note for value
received of H. C. Gaskin
Feb the 9th 1885.

Alexander M Ely for vs. Peff

vs.

Embry

James R Ely and

Defto

This cause came on to be finally heard on the papers heretofore read in the cause, and the report of Special Commissioner H J Morgan filed in the cause, during the present term showing the execution of the deed in conformity to a former decree in the cause, and was argued by counsel, and said report and deed being accepted to the consideration thereof It is adjudged ordered & decreed that the said report and deed be and are hereby confirmed And no further action being necessary in the cause, the parties are hence dismissed and the cause stricken from the docket.

Alexander M. Ely pro

vs $\frac{5}{3}$ Decm No. 3 final

James R. Ely tal
Entered Page 155

Enter this
Sep 5 1888
H. S. K. M.

A M Ely for or.

vs.

Gas R Ely & al

Peff

Defd

In Chy

This cause came on again to be further heard on the papers heretofore read in the cause, and the report of Henry J. Morgan Special Com. dated and filed in the cause July 10 1888. Showing the sale of the tract of land in the bill mentioned, and was argued by counsel. And the said report being unaccepted to. On consideration of all which It is adjudged ordered and decreed that said report and the sale therein in all things be and the same is hereby confirmed. And pursuant to the suggestion contained in said report. it is further adjudged ordered and decreed that H. J. Morgan who is made a Com. for the purpose do convey by proper deed the 60 acre tract of land in the bill mentioned to the Peff A M Ely retaining the vendors lien therein for the unpaid purchase money, with covenants of special warranty. He will report his action to the court and the cause is continued.

A M Ely for

at $\frac{2}{3}$ Dec 10.2

for R Ely cul

Entered Page 46

Hyatt co

Enter this

Sept 24 1888

H. S. M.

Alexander M. Ely for +. Poff
vs.
James R. Ely + others Defts } In Lohij

This cause came on this day to be heard on the bill of the Poff and exhibits therewith taken for confessed by all the defendants, and was argued by counsel and it appearing to the court that the two bonds sued on, constitute a lien for unpaid purchase money on the tract of land in the bill mentioned and that the Vendor's lien therefor has been reserved by the Poff in his deed of conveyance to said James R. Ely for said land. On consideration of all which it is adjudged ordered and decreed that the plaintiff for the use and benefit of H. C. Joslyn recover against James R. Ely the Vendor of said land, the sum of \$350.00 with legal interest thereon from the 25th day of January 1884, till paid and the cost of this suit and unless the sum thus decreed the plaintiff be paid him within 10 days from the rising of the court, then it is further adjudged ordered and decreed that the tract of land in the bill mentioned be sold and the proceeds applied - first to the payment of the debt above decreed the plaintiff and the cost, and secondly such sum as may remain be paid the debt John B. Waggal not however to exceed the debt due him. At such sale one third together with the cost of suit and sale shall be required to be paid in hand, and the residue in 6 or 12 months time with interest from day of sale, and the purchaser required to give bond with good security for the

Alexander Mc Elroy Sr
 or { Decr No 1
James B Elroy
 Entered May 1833
 page 115.
 J. A. McElroy & Co

James R. Clay
Entered May 1843;
page 115.
J. A. Smith & Co.

Alexander M. Ely for & Co. }
 vs. } In Ely
 Jas R. Ely others } Defts

Recd of H J Morgan Cont. in said cause Seven dollars
 and fifty eight cents the fees due me as clerk in said
 cause July 10 1888

J. A. G. Hyatt c.c.

Recd of H J Morgan Cont. as above One dollar and fifty
 the sheriffs fees in said cause July 10 1888

R. D. Belamary S. L. C.

Recd of Henry J Morgan Cont. as above, One Hundred &
 forty Seven dollars and 74 the one third part of the debt
 due me in said cause the same being the cash payment
 and I have also received of him two notes of One Hundred
 and forty Seven dollars and 74 cts each on A M Ely and
 A B. Munnay bearing interest from July 3 1888 and one
 of them payable in 6 and the other in 12 months from
 July 3 1888 and these constitute the full amount due
 me in said cause.

July 10 1888
 Henry C. Foslyn

Alexander M Ely for & Peff }
Or } Im Ely
James R Ely others } Defts }

To the Hon H. B. Morrison Judge of the Circuit
Court of Lee County Virginia:

Pursuant to your decree entered in this cause on the
third day of April 1888 after giving the bond required
thereby and after having advertised the time, terms &
and place of sale as directed thereby, the undersigned Special
Comm. proceeded at the front door of the Court House of Lee
County on the 3rd day of July 1888 that being county court
to sell the 60 acre tract of ~~the~~ land in the bill mentioned
on the terms prescribed by said Decree. When the Peff. Alex.
M Ely offered for said land the sum of \$488.94 and this
being the highest and best price offered thereof he the said
A M Ely became the purchaser thereof at said price.

Said Ely thereupon paid me one third part of the debt due
and the cost of suit and sale amounting to \$191.96 and
he with A B. Mummy as his surety (whom I regard as good)
thereupon executed to me as Comm. their two bonds for \$147.74
each, bearing interest from day of sale, the first due and
payable 6 months from date, and the other in 12 months.

This sale I regard as a fair one and think the same
should be confirmed.

The peff having sold the debt to H. B. Joslyn for whose benefit
this suit was brought, he was therefore bound to see that the
land brought the amount of the debt due, and hence his
purchase thereof;

The Peff having paid in cash the costs of suit and sale.

and an third part of the debt amounting to \$147.74 The said Beneficial plaintiff H. C. Joslyn is willing to accept of me as cash said two notes, and I have therefore turned them over to him and taken his receipt therefor together with the an third part in cash. and I have paid out the costs to the parties entitled thereto and taken receipts for the same, which are hereto attached and this being done my account of this entire transaction is shown in the following tabular statement.

To this sum being the gross amount of said sale	488 04
By 5 per cent com on \$300. returned	15 00
By 2 per cent " on residue of \$167.32 returned	3 74
By attorney's Tax fee returned	15 00
1 By this sum paid John A. G. Hyatt clerk's fees.	7 58
2 By " " " R. D. Flannery Sheriff's "	1 50
By this sum for making deed to Peff returned	2 00
3 By this sum paid H. C. Joslyn in cash	147 74
By " " " Sum two notes as cash	295 48 488 04

Thus it is seen that I have paid all the costs, and have paid to Capt Joslyn the Beneficial plaintiff the full amount of the debt decreed the Peff

The said land having been sold to pay the purchase money and only brought enough for that purpose. the wife of James R. Ely can not be entitled to a contingent right of dower.

The plaintiff having paid nearly 2/5 of the purchase of the land it seems to me it would be safe for him to have a deed of conveyance for the land by reserving the vendors lien therein for the unpaid purchase money

Respectfully Submitted

Henry J. Morgan Special Com
July 10 1888

Alexander M Ely for or. Peff

vs.

In Ship

James R Ely wife & al Defts

To the Hon H. B. K. Morrison Judge of the Circuit
Court of Lee County Virginia

As directed by your decree entered in this cause on
the 4th day of Sept 1888 I have made executed & acknowledged
for record a deed conveying to A. M. Ely the tract of land in
the bill and proceedings mentioned with covenants of Special
Warranty, reserving therein the Vendor's Lien for the unpaid
purchase money which deed is herewith submitted for your inspection

Respectfully Submitted

Henry J. Morgan Special Court.

Sept 5 1888

Alexander M Ely for

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James R. Ely for

Filed Sep 5th 1888.

Confirmed Sep 5th 1888. See Decree 103

60 acres to be sold.

Alexander M Ely from Peff
vs. } In Ely
James R Ely others Defts. }

Decease in favor of Peff vs. Deft. with interest from Jan'y 25/84 \$350.00

Interest on same to June 5 1888. 71.55

Add costs of Ely suit July 3 1888 - - - 1.75
\$27.81 423.30

Add 5 per cent on set \$300. 15.00

2 " " residue of \$151.14 3.02 458.3

One third of said sum is \$141.11 479.41

Cost of suit & loan. 45.83

Bancroft & Ely vs. Robbins dec'd Dec. 5 1887 \$22.42

Interest to July 3 1888. 78

Costs of suit 27.61
50.81

\$451.14 of Bancroft.

Alexander M. Ely Jr.

27. { Statement of calculation

James R. Ely & Co.

THIS DEED, made this 19th day of May 1886, between
James R Ely & Sarah C. Ely of the first
part and H. J. Morgan trustee of the second part
both of the County of Lee, State of Virginia :

WITNESSETH, That whereas, the said James R. Ely & Sarah C. Ely
being justly indebted to Jos B. Mygal in the full sum of
~~six hundred dollars~~ debts which the said Jos B. Mygal this day
assumed to pay for the said Elys ~~which is shown by note or bond dated on the~~ day of
188, and due and payable _____ and the said
James R & S C. Ely being willing and anxious to secure to
said Jos B. Mygal the payment of said debt with interest and
cost, and in consideration of the premises and of one dollar in hand paid, the receipt of which is
hereby acknowledged the said James R & Sarah C. Ely
doth by these presence give, grant, bargain, sell, deliver, and convey unto said H. J.
Morgan trustee as aforesaid, a certain tract or parcel of land, lying
and being in said County of Lee and About 6 Miles from
Jonesville Va and lies on the north side
of Powells River and contains about 60 acres,
and is bounded as follows
and to wit Beginning at a stake at the N
Wards corner, thence S 40 3/4 poles to a large
sarsaparilla on the north Bank of Powells River
thence up the said river as it runs and
S 8 E 5-8 poles to a stake, thence N 34 E 24 poles
to a stake, thence N 9 E 28 poles to a stake thence
North 12 E 44 poles to a large poplar & a small
ash (poplar now down) on the north Bank of
said river thence up said river with its run
and to a Beech & Locust said wards
corner, thence S 47 W 124 poles with said
wards line to the beginning, it being the
same land deeded to said J R Ely, by
Almy M. Ely on 9th day of Feb'y 1884

To have and to hold said tract or parcel of land with all its appurtenances unto the said H. J. Morgan and his heirs forever, and the said J. R. Ely & Sarah C. Ely covenants that they will warrant generally the title to the land hereby conveyed.

IN TRUST:— Nevertheless this conveyance is to be void if the said J. R. Ely & Sarah C. Ely shall on or before the 15 day of July 1887 pay or cause to be paid to the said Jos B. Myer the said debt, interest and costs of drawing and recording this deed, but if default be made in the payment of said debt, interest and costs, or any part thereof at the time aforesaid, then full power and authority is hereby given and granted to said H. J. Morgan to proceed to sell said tract or parcel of land for cash in hand to the highest bidder at public sale at the front door of the court house on some court day, after the same shall have been advertised thirty days prior thereto, showing time, terms, and place of sale, and out of the proceeds of said sale said Morgan will retain 5-per-centum commission for his trouble in the premises. He will then pay to the said Jos B. Myer whatever of said debt, interest, and cost may be then due him, and the residue if any he will pay to the said J. R. & S. C. Ely. Witness the following signature and seal.

J. R. Ely [SEAL.]
Sarah C. Ely [SEAL.]

VIRGINIA, LEE COUNTY—TO-WIT:

I John R. Gibson clerk of the Lee County Court do certify that J. R. Ely

whose name is signed to the foregoing deed, dated May the

19 1886, personally appeared

before me in said county and acknowledged

said writing to be his act and deed. Given

under my hand this 20 day of

May 1886.
John R. Gibson clerk [SEAL.]

VIRGINIA, LEE COUNTY—TO-WIT:

I John R. Gibson clerk of the Lee County Court in the State of Virginia do certify that Sarah C. Ely

the wife of J. R. Ely

whose names are signed to the foregoing deed

dated May the 19 1886

personally appeared before me in the county

aforesaid, and being examined by me

privily and apart from her said husband

and having the deed aforesaid fully explained to her declared that she

had willingly signed and executed the same and does that said deed is admitted to record did not wish to retract it. Given under my

hand and seal this the 20 day of

May 1886.
John R. Gibson clerk [SEAL.]

(271)
H. J. Morgan Trustee
From } Deed Trust

James R. Ely & wife
Recorded in Aud
Book 7024 Page 438
J. R. Gibson clk

(A5)

J. 1.00 Tax Paid
b. 125-
2.25-

Mr B. Wygal
from E Reed Lust.

J R Ely et al

May 100

Know all men by these presents,
that we Henry J. Morgan^{Esq} & J. A. G. Hyatt
are held and firmly bound unto the
Commonwealth of Virginia in the sum
of Seven Hundred (700) Dollars, and
for the prompt payment thereof well and
truly to be made unto the said Commonwealth,
we each bind ourselves heirs &
and we as to this bond waive our
Homestead exemptions, witness
our hands and seals this 8th day
of May 1888.

The Condition of the above obligation is such that whereas the above
bound H. J. Morgan was, by a decree
entered on the 3rd day of April 1888, in
the Chancery Cause of Alex. M. Ely
vs James R. Ely et al, appointed
a Commissioner and directed to
sell certain lands mentioned in
the Bill - Now therefore should
the said H. J. Morgan promptly
perform the duties assigned him
and justly account for all sums
of money he may receive as
such Commr. then this obligation to
be void otherwise to remain in full
force -

Henry J. Morgan^{Esq}
J. A. G. Hyatt^{Esq}

Alex. M. Ely for &c

as $\frac{4}{3}$

couros

Bondy

James B. Ely et al

Filed May 8th 1888

J. A. Hyatt

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon

James A. Bely, John B. Hyatt & Henry J. Morgan.

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in *February* next, being rule day to answer a bill in Chancery exhibited in our said Court

against

them by *Alexander M. Bely*
for the benefit of H. L. Joslyn

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This *17th* day of *January* 18*88*, in the 11*2* year of the Commonwealth.

J. A. G. Hyatt Clerk.

A Copy Teste

(H. M.)
A. M. Ely. for &c.
vs. { Spa. in Chas.
James R. Ely et al

To Feb. Rules 1888

Executed by
delivering an office
copy of this summons
to James R. Ely
John B. Wygal
and Henry J. Morgan
Jan 14. 28. 1888
R. D. Glanary SS for
S. H. Ewing S. S. C

Sheriff \$1.50 C